



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0564; FRL-9905-09-Region 4]

Approval and Promulgation of Implementation Plans; Florida:

Non-interference Demonstration for Removal of Federal Low-Reid Vapor Pressure Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State of Florida's August 15, 2013, State Implementation Plan (SIP) revision to the State's approved maintenance plans addressing the 1997 8-hour ozone national ambient air quality standards (NAAQS). Florida's revision provides updated modeling and demonstrates that the Southeast Florida, Tampa Bay and Jacksonville areas would continue to maintain the 1997 8-hour ozone NAAQS if the currently applicable Federal Reid Vapor Pressure (RVP) standard for gasoline of 7.8 pounds per square inch (psi) was modified to a less stringent standard of 9.0 psi for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties (hereafter also referred to as the "Maintenance Plan Areas") during the high-ozone season. The State included a technical demonstration with the August 15, 2013, SIP revision demonstrating that the less-stringent RVP in these Areas would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard. Approval of the State's August 15, 2013, SIP revision is a prerequisite for EPA's consideration of an amendment to the regulations to remove the Maintenance Plan Areas from the list of areas that are currently subject to the Federal 7.8 psi RVP requirements. EPA has determined that Florida's August 15, 2013, SIP revision with respect to the revised modeling and associated

technical demonstration, and with respect to the use of updated models, is consistent with the applicable provisions of the Clean Air Act (CAA or Act). Should EPA decide to remove the subject portions of the Maintenance Plan Areas from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a subsequent rulemaking. Also, on November 29, 2012, Florida requested removal of the existing SIP references to the previously-implemented inspection and maintenance programs in the Maintenance Plan Areas. Based upon a noninterference demonstration provided by the State, EPA previously approved revisions to remove the emission reduction credits associated with this program from the SIP. Through this action, EPA is now removing the specific SIP references to the defunct inspection and maintenance program based upon the State's earlier demonstration of noninterference.

DATES: This rule is effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2013-0564. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background of the Areas.**
 - II. What is the History of the Gasoline Volatility Requirement?**
 - III. Background of the Motor Vehicle Inspection Program.**
 - IV. This Action.**
 - V. Final Action.**
 - VI. Statutory and Executive Order Reviews.**
-
- I. Background of the Areas.**

On November 6, 1991 (56 FR 56694), EPA designated the Southeast Florida area (i.e., Broward, Dade and Palm Beach counties) as Moderate; the Jacksonville area (i.e., Duval County) as Transitional; and the Tampa area (i.e., Hillsborough and Pinellas counties) as Marginal nonattainment areas for the 1-hour ozone NAAQS. Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to meet certain volatility standards (known as Reid Vapor Pressure or RVP) for gasoline sold commercially. *See* 55 FR 23658 (June 11, 1990). As discussed in greater detail below, as part of the RVP requirements associated with these nonattainment designations, gasoline sold in the 1-hour ozone nonattainment areas could not exceed 7.8 psi RVP during the high-ozone season months.

Following implementation of the 7.8 psi RVP requirement in the Southeast Florida, Jacksonville and Tampa areas, each area was redesignated to attainment for the 1-hour ozone NAAQS (60 FR 41 (January 3, 1995); 60 FR 10326 (February 24, 1995); and 60 FR 62748 (December 7, 1995), respectively).

Included with Florida's redesignation requests, the State submitted the required 1-hour ozone monitoring data and maintenance plans ensuring that these areas would remain in attainment of the 1-hour ozone standard for at least a period of 10 years (consistent with CAA section 175A(a)). The maintenance plans submitted by Florida followed EPA guidance for maintenance areas subject to section 175A of the CAA. Florida later updated all three maintenance plans in accordance with section 175(A)(b) to extend the maintenance plans to cover additional years such that the entire maintenance period extended at least 20 years after the initial redesignation of these areas to attainment for the 1-hour ozone NAAQS.

These 1-hour ozone maintenance plan requirements remained in place for the Maintenance Plan Areas when they were subsequently designated unclassifiable/attainment for the subsequent 1997 8-hour ozone NAAQS¹ and then designated unclassifiable/attainment for the revised 2008 8-hour ozone NAAQS. *See* 77 FR 30088, May 21, 2012. However, the Maintenance Plan Areas were required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA for the 1997 8-hour ozone NAAQS.² As required, these 110(a)(1) maintenance plans provide for continued attainment and maintenance of the 1997 8-hour ozone NAAQS for at least 10 years from the effective date of these areas' designation as attainment for the 1997 8-hour ozone NAAQS. These plans also include components demonstrating how each area will continue to attain the 1997 8-hour ozone NAAQS, and provide contingency measures should the area violate the NAAQS. Florida's ozone redesignation requests and maintenance plans for the Maintenance Plan Areas did not seek removal of the 7.8 psi RVP standard, and as such, these areas remain subject to the 7.8 psi RVP standard per the terms of their approved respective 110(a)(1) maintenance plans.

II. What is the History of the Gasoline Volatility Requirement?

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-

¹ Effective June 15, 2004, Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties in Florida were designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS. *See* 69 FR 23857. The same counties were designated as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088.

² As noted above, maintenance areas for the 1-hour ozone standard designated attainment/unclassifiable for the 1997 8-hour ozone standard are required to submit a maintenance plan under section 110(a)(1) of the CAA demonstrating maintenance out to 10 years after designation. *See* 69 FR 23996 (Apr. 30, 2004).

powered vehicles and equipment. Evaporative emissions from gasoline, referred to as VOC, are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Pursuant to section 211(c) of the CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868), that set maximum limits for the RVP of gasoline sold during the high-ozone season. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the high-ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS during the high-ozone season).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high-ozone season. Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658).

As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to EPA's volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program within the limits of CAA section 211(h).³ In those rulemakings, EPA explained that the Governor of a State may petition EPA to set a volatility standard less stringent than 7.8 psi for some month or months in a nonattainment area. The petition must demonstrate such a change is appropriate because of a particular local economic impact and that sufficient alternative programs are available to achieve attainment and maintenance of the 1-hour ozone NAAQS. A current listing of the RVP requirements for states can be found on EPA's website at:

<http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm>.

As explained in the December 12, 1991 (56 FR 64704), Phase II rulemaking, EPA believes that relaxation of an applicable RVP standard in a nonattainment area is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for a period of ten years after redesignation.

³ See 55 FR 23658 (June 11, 1990), 56 FR 24242 (May 29, 1991) and 56 FR 64704 (Dec. 12, 1991).

Depending on the Area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the volatility standard unless the state requests a relaxation and the maintenance plan demonstrates, to the satisfaction of EPA, that the area will maintain attainment for ten years without the need for the more stringent volatility standard. As noted above, however, Florida did not request relaxation of the applicable 7.8 psi RVP standard when the Jacksonville, Southeast Florida and Tampa Areas were redesignated to attainment for the 1-hour ozone NAAQS. Rather, Florida is now seeking to relax the 7.8 psi RVP standard after these Areas have been redesignated to attainment for the 1-hour ozone NAAQS. Accordingly, the original modeling and maintenance demonstration supporting the section 110(a)(1) ozone maintenance plans must be revised to reflect continued attainment under the relaxed 9.0 psi RVP standard that the State has requested.

III. Background of the Motor Vehicle Inspection Program.

The State of Florida previously implemented a motor vehicle inspection and maintenance program in the Jacksonville, Southeast Florida and Tampa areas as part of the State's strategy to meet the 1-hour ozone NAAQS. This program was referred to as the Motor Vehicle Inspection Program (MVIP). On July 1, 2000, the Florida legislature terminated the MVIP for Jacksonville, Southeast Florida and Tampa, and removed the program's statutory authority. As a consequence of this repeal, FDEP developed and submitted SIP revisions to remove the emissions reductions attributable to this program in the aforementioned areas from the Florida SIP. Specifically, on

December 10, 1999, FDEP submitted a revision to the SIP for the ozone air quality maintenance plans for the Jacksonville and Southeast Florida areas, and on August 29, 2000, for the Tampa, Florida area. FDEP's submissions requested the removal of the emission reduction credits attributable to the MVIP from the future year emission projections contained in the maintenance plans and provided a demonstration that removal of the emission reductions associated with the MVIP would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. At the time, however, Florida did not also explicitly request removal from its SIP of the regulatory references to the MVIP program. Subsequently, in EPA's final rulemakings, published August 2, 2001 (66 FR 40137), and August 15, 2002 (67 FR 53314), the Agency approved the SIP revisions removing the emissions reductions that were attributable to the inspection and maintenance program in the Maintenance Plan Areas, but the regulatory references to the MVIP program remained.

Florida's December 10, 1999, and August 29, 2000, SIP revisions demonstrated that the Maintenance Plan Areas could maintain the ozone NAAQS without the implementation of the MVIP. EPA reviewed the State's emissions inventory and modeling analyses and found that they met the applicable guidance and requirements. Therefore, the State made the necessary demonstration that the MVIP was not necessary to maintain the ozone NAAQS and that attainment of the NAAQS for any other pollutant would not be affected by removing the MVIP from the SIP. However, because EPA did not remove Florida Code Annotated Section 62-242 from the table of EPA-approved rules at 40 CFR 52.520, on November 29, 2012, FDEP submitted a letter to EPA requesting that EPA remove these now-defunct rules from the Florida SIP. In its letter, the State noted that these rules relate to the defunct MVIP, and also noted EPA's previous rulemakings to remove the emissions reductions attributable to this program in

its SIP. The portion of today's action related to removal of the MVIP rules from the SIP is being taken in response to the State's November 29, 2012, request, and is based upon the previously approved non-interference demonstration provided by Florida to support the removal of the emission reduction credits associated with the now-defunct inspection and maintenance program in the Southeast Florida, Tampa Bay and Jacksonville areas.

EPA notes that the section 110(l) non-interference demonstration submitted by Florida in support of its requested RVP revisions is also premised upon the continued non-implementation of the now-discontinued MVIP in these areas.

IV. This Action.

On November 8, 2013 (78 FR 67090), EPA proposed approval of Florida's August 15, 2013, SIP revision to the State's approved maintenance plans addressing the 1997 8-hour ozone NAAQS in the Southeast Florida, Tampa Bay and Jacksonville areas. Specifically, Florida's revision, including updated modeling, shows that these areas would continue to maintain the 1997 8-hour ozone standard if the currently applicable Federal RVP standard for gasoline of 7.8 psi was modified to a less stringent standard of 9.0 psi for Broward, Dade, Duval, Hillsborough, Palm Beach and Pinellas Counties during the high-ozone season. Florida's August 15, 2013, SIP revision, includes updated mobile source emissions modeling using EPA's approved models - Motor Vehicle Emissions Simulator (MOVES) and NONROAD2008 - to support the request to modify the RVP gasoline requirement from 7.8 psi to 9.0 psi.

Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA's criterion for determining the

approvability of Florida's August 15, 2013, SIP revision is whether the requested action complies with section 110(l) of the CAA. Because the modeling associated with the current maintenance plans for Florida are premised in part upon the 7.8 psi RVP requirement, a request to revise the maintenance plan modeling to no longer rely on the 7.8 psi RVP requirement is subject to the requirements of CAA section 110(l). Therefore, the State must demonstrate that its August 15, 2013, SIP revision will not interfere with the attainment or maintenance of any of the NAAQS or any other applicable requirement of the CAA. EPA also notes that Florida's technical demonstration in its August 15, 2013, SIP revision accounts for the absence of the previously-implemented inspection and maintenance programs in the Maintenance Plan Areas.

The section 110(l) non-interference demonstration is a case-by-case determination based upon the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated, but for which the EPA has not yet made designations. The specific elements of the 110(l) analysis contained in the SIP revision depend on the circumstances and emissions analyses associated with that revision. EPA's analysis of Florida's August 15, 2013, SIP revision, including review of section 110(l) requirements, can be found in the proposed rule published on November 8, 2013 (78 FR 67090). The specific revisions to the maintenance plan modeling that EPA is approving are the ozone maintenance plan attainment inventories, emissions projections and air quality monitoring data. The revised modeling also utilizes updated models to calculate the mobile source emissions.

Also, based on a request by the State on November 29, 2012, EPA is removing the existing SIP references related to the previously-implemented inspection and maintenance programs in the Maintenance Plan Areas. As discussed above, Florida discontinued this program and submitted SIP revisions in 1999 and 2000 to remove the emissions reduction credits

associated with the MVIP program from its SIP. *See* 66 FR 40137; 67 FR 53314. At the time, Florida demonstrated that removal of these emission credits would not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. In addition, the State's technical demonstration provided with the August 15, 2013, RVP-related SIP revision also demonstrates that the less-stringent RVP standard and the absence of an inspection and maintenance program in these areas would not interfere with continued maintenance of the 1997 8-hour ozone NAAQS or any other applicable standard.

EPA received no adverse comments on its proposed action and is therefore finalizing the proposed action.

V. Final Action.

EPA is approving the State of Florida's August 15, 2013, SIP revision to its 1997 8-hour ozone NAAQS 110(a)(1) Maintenance Plans for the Maintenance Plan Areas. Specifically, EPA is approving the State's showing that the Maintenance Plan Areas can continue to maintain the 1997 ozone standard without the emissions reductions associated with both the previously-implemented MVIP, and the use of gasoline with an RVP of 7.8 psi during the high-ozone season – June 1 through September 15 in the Maintenance Plan Areas. Also, EPA is approving the updated attainment inventories, emissions projections and air quality monitoring which are associated with the updated and revised modeling related to the change in the applicable RVP standard, and the absence of the previously-implemented inspection and maintenance programs for the Maintenance Plan Areas. Additionally, EPA is removing Florida Code Annotated Section 62-242, which pertains to the now-defunct MVIP, from the Florida SIP.

EPA has determined that Florida's August 15, 2013 SIP revision, including the technical demonstration associated with the State's request for the removal of the Federal RVP requirements, and the updated attainment inventory, emissions projections and air quality monitoring data, and the removal of the MVIP-related sections of the Florida SIP are consistent with the applicable provisions of the CAA. Should EPA decide to remove the subject portions of the Maintenance Plan Areas from those areas subject to the 7.8 psi Federal RVP requirements, such action will occur in a separate rulemaking.

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

Dated: December 19, 2013

Beverly H. Banister

Acting Regional Administrator,

Region 4

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K – Florida

2. In § 52.520:

a. Amend paragraph (c) by removing the heading and all entries for “Chapter 62-242 Motor Vehicle Emissions Standards and Test Procedures,”; and

b. Amend paragraph (e) by adding a new entry for “RVP Update for Florida 1997 8-hour Ozone Maintenance Plans” at the end of the table.

The addition reads as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-Approved Florida Non-Regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
**	**	*	*	*
RVP Update for Florida 1997 8-hour Ozone Maintenance Plans	8/15/13	[Insert date of Publication in <u>Federal Register</u>]	[Insert citation of publication]	

[FR Doc. 2013-31557 Filed 01/03/2014 at 8:45 am; Publication Date: 01/06/2014]